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6. Homicide (§ 286 (3)*)—An Instruction on Willful and Premeditated Killing Held Not Supported by the Evidence.—An instruction that a mortal wound given with a deadly weapon in slayer's previous possession, without any, or upon very slight, provocation, is prima facie willful, deliberate, premeditated killing, requiring accused to prove extenuating circumstances, held erroneous, because without evidence to support it.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 155, et seq.]

Error to Circuit Court, Russell County.

One Richardson was convicted of murder in the second degree, and he brings error. Reversed, and new trial awarded.

Finney & Wilson, of Lebanon, for the plaintiff in error.

John R. Saunders, *Atty. Gen.*, and *J. D. Hank, Jr.*, *Asst. Atty. Gen.*, for the Commonwealth.

EWING et al. v. DUTROW et al.

Nov. 18, 1920.

[104 S. E. 791.]

1. Equity (§ 46*)—No Jurisdiction of Suit for Damages for Fraudulent Sale of Stock.—The remedy at law being full, adequate, and complete, equity has no jurisdiction of a suit merely for damages for fraudulent representations in a sale of stock, there being no question of complicated accounts, but the fact for determination being whether the true condition of the corporation's business was fairly indicated in the financial statements and representations alleged to have been made by defendants, and this though testimony of expert accountants may be necessary.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 476.]

2. Appeal and Error (§ 1107*)—Change in Decree Authorized Only in Case of Reversal.—The decree dismissing the bill because not within equitable jurisdiction having been right as the law stood at the time, the case cannot be remanded, with direction to transfer to the law side, Code 1919, § 6365, authorizing the appellate court to make a change in the decree only where it is reversed in whole or part.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 619, et seq.]

Appeal from Circuit Court, Rockingham County.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Suit by I. S. Ewing and others against William B. Dutrow and another. Bill dismissed, and complainants appeal. Affirmed.

Ed. C. Martz and D. O. Dechert, both of Harrisonburg, for appellants.

Geo. N. Conrad, of Harrisonburg, for appellees.

WOODSON *v.* SMITH.

SAME *v.* JOHNSON.

Nov. 18, 1920.

[104 S. E. 794.]

1. Deeds (§ 94*)—Prior Contracts with Terms Inconsistent with Provision of Deed Are Merged in Deed.—Where contracts for sale of properties provided for a reservation of the possession until a date named, deeds made later containing the usual covenants, including that for quiet and peaceable possession, were inconsistent with the contracts which were therefore merged therein; Code 1919, § 5175, providing that the covenants of such deeds mean that the grantee might at any and all times thereafter peaceably and quietly enter and hold the land.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 419, et seq.]

2. Deeds (§ 94*)—Prior Contracts Held Merged in Deeds Made Pursuant Thereto.—While there is a distinction as to merger of contract in later deed as to whether the deed is "in performance of" the contract or merely "pursuant to" the contract, such distinction has no application where the terms of the contract and deed are inconsistent.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 419, et seq.]

Error to Circuit Court, Nelson County.

Actions by J. C. Woodson against Martha D. Smith and J. E. Johnson, respectively. The cases were tried together and joint judgment for defendants was rendered, and plaintiff brings error. Affirmed.

Volney E. Howard and J. T. Coleman, Jr., both of Lynchburg, for plaintiff in error.

A. E. Strode and S. V. Kemp, both of Lynchburg, for defendants in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.